



Scottish Information
Commissioner
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Decision Notice 255/2024

Case notes relating to specific title

Authority: Keeper of the Registers of Scotland
Case Ref: 202300244

Summary

The Applicant asked the Authority for all case notes held relating to a specific title. The Authority provided the information with some personal data redacted. The Applicant believed the Authority held further information which it had not disclosed, particularly that covering a specific period. The Commissioner investigated and was satisfied that the Authority held no further relevant information.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (4) (General entitlement); 47(1) and (2) (Application for decision by Commissioner)

Background

1. On 5 May 2022, the Applicant made a three-part request for information to the Authority, which included the following request:
Could you please provide us with all case notes for our title [reference number].
2. The remaining parts of the request do not form part of the Applicant's application to the Commissioner.

3. The Authority responded on 31 May 2022. It provided the information requested, some of which had been redacted under section 38(1)(b) (Personal information) of FOISA as this comprised personal data, disclosure of which, the Authority explained, would breach the lawfulness, fairness and transparency data protection principle. The Authority explained that the information disclosed comprised a level 3 plans report, an extract from its complaints log, an extract from the Secretariat's correspondence log and internal notes relating to the title.
4. On 24 July 2022, the Applicant wrote to the Authority, requesting a review of its decision. The Applicant stated that she was dissatisfied with the decision because, while she understood why third party personal data had been redacted, the Authority had provided no information on the title between March 2017 and August 2018, when a rectification had taken place. The Applicant stated that she expected to see correspondence between Plans and Legal with regard to the registering of the title from March 2017.
5. The Authority notified the Applicant of the outcome of its review on 18 August 2022. It confirmed that it had identified further information which it disclosed to the Applicant, with some information redacted under section 38(1)(b) of FOISA to comply with data protection legislation.
6. On 17 February 2023, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that she was dissatisfied with the outcome of the Authority's review because, while it had uncovered more case notes, these still did not show anything from Plans or Legal between March 2017 and April 2018, when the title was registered. The Applicant stated she was looking for full case notes for the title (which might be redacted) which, she believed, must be held for the integrity of the Register.

Investigation

7. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
8. On 7 March 2023, and in line with section 49(3)(a) of FOISA, the Commissioner gave the Authority notice in writing of the application and invited its comments.
9. The Authority provided its initial comments on 29 March 2023, which confirmed that there was no change to its position. The case was subsequently allocated to an investigating officer.
10. Following consideration of the Authority's initial comments, the Investigating Officer invited the Authority to provide further comments and to answer specific questions. These focused on the searches undertaken by the Authority to establish whether it held any information falling within the scope of the request.

Commissioner's analysis and findings

11. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.

Does the Authority hold any further relevant information?

12. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the public authority, subject to qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The qualifications contained in section 1(6) are not applicable in this case.
13. The information to be given is that held by the Authority at the time the request is received, as defined by section 1(4). This is not necessarily to be equated with information an applicant believes the public authority should hold. If no such information is held by the public authority, section 17(1) of FOISA requires the authority to give the applicant notice in writing to that effect.
14. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance of probabilities lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority. He also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. While it may be relevant as part of this exercise to explore expectations about what information the authority should hold, ultimately the Commissioner's role is to determine what relevant recorded information is (or was, at the time the request was received) actually held by the public authority.
15. The Commissioner has taken account of the arguments in both the Applicant's requirement for review and her application, in which she provides reasons why she considers the Authority may hold the information requested.
16. The Authority submitted that, when responding to the request, it had interpreted "case notes" to mean information pertaining to the process of registration of the title. It explained that case notes were not recorded in a standard format against all applications for registration:
 - Certain artefacts contained in submissions were retained permanently within the statutory Land Register Archive. These included applications forms, deeds, and any other information judged at the time to be crucial in informing any registration decision made.
 - A wide variety of other information, such as external and internal correspondence, internal notes and referrals etc., was retained on the Land Register Business Record.
 - The above information was not held in a single case management system but held across several systems.
 - It was not typical for individual caseworkers to hold case notes relating to a title unless it was in progress, but searches for requests relating to specific titles typically went to all teams that may hold relevant information and it was felt prudent to do so in this case.
 - It was known from previous requests that there had been ongoing correspondence, including complaints, relating to this title, with specific Authority staff best placed to deal with complex registration enquiries.

17. Based on the above, the Authority identified the following sources as potentially holding relevant information:
- Archive Record and Business Record.
 - Teams: Registration Practice Team, Policy and Legal, Post Registration and Rectification Enquiries, Secretariat, Customer Service Management, and the Property and Information Team Management.
 - Colleagues identified as the primary contacts for the ongoing enquiries relating to this title.
18. The Authority explained that information deemed to be in scope, compiled from the above, included internal referral documents, a pre-registration plans report, log entries relating to the title and relevant complaints, and internal notes relating to the handling of complaints received regarding the title.
19. At review stage, the Authority confirmed that further case notes had been identified from the Application N&I (Notes and Instructions) section of the Land Registration System, which fell within scope. The Authority stated that it disclosed these to the Applicant with an apology for the original omission; however, no further information falling within the scope of the request was identified.
20. During the investigation, the Authority explained that it had recently undergone a SharePoint migration project, which was completed in March 2024, and it now had access to the M365 eDiscovery tool, which provided a new comprehensive means of searching the Authority's corporate information. It confirmed that it had conducted searches of SharePoint, Teams, OneDrive and Outlook via the MS eDiscovery tool, the Land Registration System, the Case Management System and the Land Register Archive.
21. The Authority confirmed that, having completed this new search, information relevant to the title had been identified. It was of the view, however, that none of this newly-identified information fell within the scope of the request, particularly the more specific and detailed nature as described by the Applicant in her application to the Commissioner, i.e. case notes between Legal and Plans dated between March 2017 and April 2018. It explained that this information, now identified, was relevant to the title more broadly, and had been gathered in relation to subsequent enquiries and complaints, mostly dated after the Applicant's request. It recognised, however, that this information may be helpful to the Applicant as it contained some detailed overviews of the relevant, overall issues, although it remained the Authority's view that it did not fall within the scope of the request.
22. In conclusion, the Authority remained of the view that a proportionate and reasonable search had been carried out, all sources had been searched and there were no additional known sources where relevant information could be held. The Authority stated that all information falling within the scope of the request had been provided to the Applicant, and that it held no further in-scope information.
23. The Authority provided the newly-identified information to the Applicant on 11 September 2024. It explained to her that a new search had been carried out as it now had access to the M365 eDiscovery tool, which had not been available at the time of her original request and, given the passage of time, it was possible that new information might have been created which might be of assistance. The Authority provided reasons why it

believed the information did not fall within the scope of the request and so had not been previously provided.

24. Following the Authority's further response, the Applicant wrote to the Commissioner expressing her dissatisfaction with the information disclosed. She stated that she had specifically asked for, and was expecting to receive, case notes covering the period 1 March 2017 until a rectification took place at the end of August 2018. As she had made her request in May 2022, she failed to understand why information post-dating this had been provided, information which she was clearly not looking for. She reiterated her wish to obtain the information from the dates noted above.

The Commissioner's view

25. Having considered all relevant submissions and the terms of the request, the Commissioner is satisfied that, by the end of the investigation, the Authority had taken adequate, proportionate steps in the circumstances to establish whether it held any information that fell within the scope of the request.
26. The Commissioner notes that the Applicant believes the Authority might have held further information falling within the scope of her request. The Authority has explained why it does not hold that information.
27. The Commissioner has considered the evidence of the searches carried out by the Authority at initial response and review stages, and during his investigation, which appear to him to be detailed and robust. Having done so, he is satisfied that these searches would have been capable of identifying any further information held by the Authority relevant to the request.
28. The Commissioner has considered the further information identified by the Authority during the investigation following its further searches. Having done so, he accepts that none of it falls within the scope of the request in that it is not a "case note": it either comprises external correspondence, information relating to a complaint, or is dated after the Applicant made her request to the Authority. He recognises that the Authority had provided this information in the belief that it may have been helpful to the Applicant and, in doing so, it had explained to her why it was of the view that the information did not fall within the scope of her request.
29. In the circumstances, therefore, the Commissioner is satisfied, on the balance of probabilities, that the Authority does not (and did not, on receipt of the request) hold any further information falling within the scope of the Applicant's request.

Decision

The Commissioner finds that the Authority complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant.

Appeal

Should either the Applicant or the Authority wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

Euan McCulloch
Head of Enforcement

12 November 2024